

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION

REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-0729-01 E
For use by Office of Administrative Law (OAL) only		2009 JUL 29 AM 11:15	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Food and Agriculture		AGENCY FILE NUMBER (if any) PH09047	


A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) White Striped Fruit Fly Interior Quarantine		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)			
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)					
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 3436			
		AMEND			
TITLE(S) 3		REPEAL			
3. TYPE OF FILING					
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only					
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)					
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____					
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____					
7. CONTACT PERSON Stephen S. Brown		TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018	E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 7/23/09
TYPED NAME AND TITLE OF SIGNATORY Robert L. Wynn, Statewide Coordinator, Pierce's Disease Control Program	

For use by Office of Administrative Law (OAL) only

In Title 3, Division 4, Chapter 3, adopt Section 3436 to read:

Section 3436. *Bactrocera albistrigata* Interior Quarantine.

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. White striped fruit fly, *Bactrocera albistrigata*.

(b) Area Under Quarantine.

(1) In the Counties of Los Angeles and San Bernardino, in the La Verne area: Beginning at the intersection of N Grand Avenue and W Sierra Madre Avenue; then, easterly along W Sierra Madre Avenue to its intersection with Rainbow Drive; then, starting northerly along said drive to its northeastern most point; then northwesterly along an imaginary line to its intersection with the boundary line of Angeles National Forest and Glendora Ridge Motorway; then, starting easterly along said motorway to its intersection with Glendora Mountain Road; then, easterly along an imaginary line to its intersection with Mount Baldy Road and Shinn Road; then, starting northerly along said road to its intersection with N Mountain Avenue; then, starting easterly along said avenue to its intersection with W 16th Street; then, westerly along said street to its intersection with N Benson Avenue; then, southerly along said avenue to its intersection with W Arrow Highway; then, westerly along said highway to its intersection with N Central Avenue; then, southerly along said avenue to its intersection with Central Avenue; then, southerly along said avenue to its intersection with US Interstate 10; then, starting southwesterly along said interstate to its intersection with 34.081951 latitude and -117.706991 longitude; then, southerly along an imaginary line to its intersection with Palo Verde Street and Ramona Avenue; then, southerly along said avenue to its intersection with Holt Boulevard; then, westerly along said boulevard to its intersection with E holt Avenue; then, westerly along said avenue to its intersection with W Holt Avenue; then, westerly along said avenue to its intersection with State Highway 71; then, northwesterly along said highway to its intersection with US Interstate 10; then, starting southwesterly along said interstate to its intersection with E Via Verde Street; then, northeasterly along said street to its intersection with Via Verde; then,

starting easterly along Via Verde to its intersection with W Puente Street; then, starting northwesterly along said street to its intersection with E Puente Street; then, starting northwesterly along said street to its intersection with N Reeder Avenue; then, starting northerly along said street to its intersection with E Badillo Street; then, starting southwesterly along said street to its intersection with Glendora Avenue; then, northerly along said avenue to its intersection with E Arrow Highway; then, westerly along said highway to its intersection with S Grand Avenue; then, northerly along said avenue to its intersection with N Grand Avenue; then, northerly along said avenue to the point of beginning.

(c) Articles and Commodities Covered. The following are declared to be hosts and possible carriers of white striped fruit fly.

(1) All fruit, vegetables or berries of the following:

<u>Scientific Name</u>	<u>Common Name</u>
<u><i>Aglaia argentea</i></u>	
<u><i>Averrhoa carambola</i></u>	<u>Carambola</u>
<u><i>Calophyllum inophyllum</i></u>	<u>Alexandrian laurel</u>
<u><i>Gmelina elliptica</i></u>	<u>Badhara bush</u>
<u><i>Mimusops elengi</i></u>	<u>Bakula</u>
<u><i>Guettarda speciosa</i></u>	<u>Beach gardenia</u>
<u><i>Syzygium aromaticum</i></u>	<u>Clove</u>
<u><i>Psidium guajava</i></u>	<u>Guava</u>
<u><i>Artocarpus heterophyllus</i></u>	<u>Jackfruit</u>
<u><i>Neisosperma oppositifolium</i></u>	<u>Kojbar</u>
<u><i>Syzygium malaccense</i></u>	<u>Malay-apple</u>
<u><i>Mangifera indica</i></u>	<u>Mango</u>
<u><i>Polyalthia longifolia</i></u>	<u>Mast tree</u>
<u><i>Scolopia spinosa</i></u>	
<u><i>Syzygium spp.</i></u>	
<u><i>Syzygium aqueum</i></u>	<u>Watery rose-apple</u>
<u><i>Syzygium jambos</i></u>	<u>Rose apple</u>
<u><i>Syzygium samarangense</i></u>	<u>Water apple</u>

Terminalia catappa

Tropical almond

Terminalia procera

Singaporel almond

(2) Soil within the drip area of plants producing, or which have produced fruit or berries as listed in (c)(1) above.

(3) Any other product, article, or means of conveyance when it is determined by the Secretary or county agricultural commissioner to present a hazard of spreading live life stages of white striped fruit and the person in possession thereof has been so notified.

(d) Restrictions.

(1) At the wholesale level, articles and commodities covered in Section (c) are prohibited movement within or from the area under quarantine except as provided in (A) or (B) below:

(A) If the article or commodity has been treated in a manner approved by the department to eliminate white striped fruit fly, is transported in a manner to preclude exposure to white striped fruit fly, and is accompanied by a written certificate issued by an authorized State or county agricultural official affirming compliance with this subsection; or,

(B) The article or commodity is moving for treatment for white striped fruit fly or processing and in a manner approved by the department to preclude exposure to white striped fruit fly and is accompanied by a written certificate issued by an authorized State or county agricultural official affirming such movement has been authorized under this subsection.

(2) At the wholesale level, articles and commodities covered in Section (c) which have been commercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when accompanied by a shipping document indicating the point of origin and destination and moved in compliance with (A), (B) or (C) below:

(A) If the article or commodity is moving directly through the area under quarantine without delay and by a direct route in an enclosed

vehicle or container or completely enclosed by a covering to prevent exposure to the white striped fruit fly while en route through the area; or,

(B) The article or commodity is destined to a wholesale or retail establishment within the quarantined area and, if moving between 9:a.m. and sunset, is transported in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the white striped fruit fly; or

(C) The article or commodity is destined to a commercial processing facility.

(3) At the retail level, articles and commodities covered which have been commercially produced are prohibited movement from or within the area under quarantine except when the person in possession has a sales slip or other comparable document showing the commodity was purchased from a commercial establishment.

(4) Articles and commodities covered which have been noncommercially produced within the area under quarantine, including "backyard" production, are prohibited movement from the premises where grown except under written authorization of the department or county agricultural commissioner.

(5) Articles and commodities covered which have been noncommercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when the person in possession has signed a statement showing the commodity, amount, origin, destination, and date of transportation.

(6) Within the area under quarantine, no wholesale or retail establishment shall handle, sell, or offer for sale any article or commodity covered unless such commodities at all times are maintained in a manner approved by the department to preclude exposure to white striped fruit fly. No commodity covered shall be held for sale or sold from a truck, trailer, or other mobile vehicle.

Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

Reference: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

On July 9 (State of California Pest and Damage Record (PDR) #1443177) and 13 (PDR #1443179), 2009, two adult male white striped fruit flies were trapped in the La Verne area of Los Angeles County. On July 17 (PDR #1443183) and 20 (PDR #1443186), 2009, one male and one mated female with eggs were trapped in the San Dimas area of Los Angeles County. The detection of multiple adult white striped fruit flies meets the State's standards that an incipient infestation of the fly exists in these areas of Los Angeles County.

This is the first time that the white striped fruit fly has been introduced into the U.S. The white striped fruit fly is a known destructive insect pest of guavas and mangos (Emails dated July 10 and 21, 2009, from Kevin Hoffman to Stephen Brown and an attachment). The fruiting bodies of tropical almond (*Terminalia catappa*), jackfruit (*Artocarpus heterophyllus*), carambola (*Averrhoa carambola*), clove (*Syzygium aromaticum*), watery rose-apple (*Syzygium aqueum*), rose apple (*Syzygium jambos*), Malay-apple (*Syzygium malaccense*), water apple (*Syzygium samarangense*), *Syzygium* spp., and a number of Asian trees occasionally planted as ornamentals [*Aglaia argentea*, Alexandrian laurel (*Calophyllum inophyllum*), badhara bush (*Gmelina elliptica*), beach gardenia (*Guetarda speciosa*), bakula (*Mimusops elengi*), kojbar

(*Neisosperma oppositifolium*), mast tree (*Polyalthia longifolia*), and *Scolopia spinosa*] are known to be hosts. However, the known host list for *Bactrocera albistrigata* comes from fruit collection studies performed in parts of its native range in tropical Asia. The list happens to include two commercially important fruits for the U.S., namely guava and mango. However, no studies have been performed to test whether fruits not commonly grown in tropical Asia, such as cherries and grapes, etc., could be hosts (Email dated July 15, 2009, from Kevin Hoffman to Stephen Brown). Therefore it is possible that *B. albistrigata* could find these and other widely grown California fruit suitable as hosts should this fly become established in the State. Like other fruit flies, larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. The fly can be artificially spread by movement of hosts which are infested with the fly.

The general appearance of *B. albistrigata* resembles an Oriental fruit fly, but *B. albistrigata* differs from it by the wing pattern and the coloration pattern on the thorax and abdomen. The wing has a brown mark along the front edge which becomes very faint at mid length, and then reappears as a faint spot towards the tip; there are two brown stripes going across the wing, one at the base and one at midlength. The thorax has a yellow scutellum which can have a dark triangle mark anteriorly. The abdomen has a dark stripe down the middle, flanked by two broader stripes at the sides; the posterior half of segment two is pale.

No information is available on developmental parameters for the white striped fruit fly. Therefore, the Department intends to use life cycle projections based on the values used for a related species, namely Oriental fruit fly, *Bactrocera dorsalis*.

The white striped fruit fly is a cuelure attracted fruit fly. The Department's "Action Plan for Cuelure Attracted Fruit Flies including Melon Fly *Bactrocera cucurbitae* (Coquillett)" will be followed for any eradication and/or quarantine actions that the Department may take against *Bactrocera albistrigata* (Email dated July 15, 2009, from Kevin Hoffman to Stephen Brown). This action plan is appropriate for *B. albistrigata* because this fly responds to the lure around which this plan is based, namely cuelure.

The white striped fruit fly has the capability of causing significant harm to some of California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

The proposed quarantine area includes the initial detection sites and a buffer zone extending approximately 4-1/2 miles in each direction from each detection site. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The buffer area will encompass a portion of San Bernardino County. The boundary was drawn jointly by the United States Department of Agriculture, The California Department of Food and Agriculture and the Agricultural Commissioners of Los Angeles (Letter dated July 27 from Kurt Floren to A.G. Kawamura) and San Bernardino (Letter dated July 28 from John Gardner to A.G. Kawamura) counties, and the proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of white striped fruit fly to noninfested areas.

The immediate implementation of this proposed regulatory action is also necessary to prevent the USDA from considering the entire State as infested with white striped fruit fly. Additionally, the USDA is in the process of revising a federal domestic regulation and cannot regulate less than the entire State unless it has a parallel State regulation. If the USDA were to regulate the entire State, there would be additional detrimental quarantine requirements directed against California host commodities by the USDA and our concerned international trade partners.

The proposed adoption of Section 3436(a) will establish the targeted pest, white striped fruit fly (*Bactrocera albistrigata*).

The proposed adoption of Section 3436(b) will establish the area under quarantine in Los Angeles and San Bernardino counties (approximately 81 square miles).

The proposed adoption of Section 3436(c) will establish the articles and commodities covered. The proposed adoption of Section 3436(d) will establish the restrictions on the articles and commodities covered.

The affect of the proposed adoption of this regulation is to provide authority to the State to conduct quarantine activities against the white striped fruit fly in portions of Los Angeles and San Bernardino counties.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products. Mexico, one of our major agricultural trading partners, already considers the white striped fruit a serious quarantine pest (refer to MAF Biosecurity New Zealand, Importing Countries Phytosanitary Requirements, Mexico).

To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it is necessary to adopt this regulation as an emergency action.

Authority and Reference Citations

Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

Reference: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.

Section 3591.2, White Striped Fruit Fly Eradication Area.

The adoption of Section 3591.23 will establish: portions of Los Angeles and San Bernardino counties as under quarantine for the pest *Bactrocera albistrigata* (white striped fruit fly), the article and commodities covered and the restrictions on the movement of the articles and commodities covered. The effect of this adoption will be to provide authority for the State to perform quarantine activities against white striped fruit fly in portions of Los Angeles and San Bernardino counties to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3436 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioners of Los Angeles and San Bernardino counties requested the adoption of this regulation.

Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.